

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

PAUL SCOTT KLEIN,) 3:08-CV-191-ECR-VPC
)
Plaintiff,) MINUTES OF THE COURT
)
vs.) DATE: September 22, 2009
)
CLARK COUNTY SCHOOL DISTRICT,)
et al.,)
)
Defendants.)
)

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE

Deputy Clerk: COLLEEN LARSEN Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

MINUTE ORDER IN CHAMBERS

On August 6, 2009, the Magistrate Judge filed a Report and Recommendation (#187), recommending that Defendant Kimoto's Motion to Dismiss (#128) be granted with prejudice as to all counts, and that Plaintiff's Motion to Strike (#138) be denied. No objections to the Report and Recommendation (#128) were filed.

Also on August 6, 2009, the Magistrate Judge filed a Report and Recommendation (#188), recommending that Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (#129) be granted in part and denied in part. On August 24, 2009, Defendants filed Objections (#189) to the Magistrate Judge's Report and Recommendation (#188) insofar as it denied Defendants' motion (#129) in part. Plaintiff has filed a Motion to Strike (#193) Defendants' Objections (#189) as untimely.

Defendants' Objections (#189) were timely filed: though the Magistrate Judge filed her Report and Recommendation (#188) on August 6, it was not entered onto the electronic docket of the Court until August 10. As such, objections to the Report and Recommendation were due on August 24, 2009. Since the Objections (#189) were filed on that date, they were timely.

Defendants, however, seek to have us consider additional evidence that was not before the Magistrate Judge when she considered Defendants' motion (#129). It would be inappropriate for us to consider such evidence, which should have been presented to the Magistrate Judge in the first instance. Thus, though Defendants' Objections were timely, they lack merit.

We conclude that the Magistrate Judge's Report and Recommendation (#188) was neither clearly erroneous nor contrary to law on the record that was before the Court at the time of the Magistrate Judge's ruling. There was no evidence in the record then as to whether Plaintiff was given written notice of charges before his August 17, 2007, disciplinary hearing. Further, the circumstance that Plaintiff may only be able to receive nominal damages on his due process claim is not an appropriate basis for entry of summary judgment against him.

IT IS, THEREFORE, HEREBY ORDERED that the Report and Recommendation (#187) and Report and Recommendation (#188) are **APPROVED** and **ADOPTED**.

IT IS FURTHER ORDERED that Defendant Kimoto's Motion to Dismiss (#128) is **GRANTED** with prejudice as to all counts.

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike (#138) is **DENIED**.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (#129) is **GRANTED** as to counts 1-15 and as to Plaintiff's retaliation claim in count 16 and **DENIED** as to Plaintiff's procedural due process claim in count 16.

IT IS FURTHER ORDERED that Defendants' Objections (#189) to the Magistrate Judge's Report and Recommendation (#188) are **OVERRULED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike (#193) is **DENIED**.

LANCE S. WILSON, CLERK

By _____ /s/
Deputy Clerk